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In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1934.

Nos. 471 and 472.

UNITED STATES OF AMERICA et al.,
Petitioners,

against

BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees,
Respondents.

No. 531.

F. EUGENE NORTZ

against

UNITED STATES OF AMERICA.

No. 532.

JOHN M. PERRY

against

UNITED STATES OF AMERICA.

STATEMENT, BRIEF AND ARGUMENT OF AMICUS CURIAE.

PAUL BAKEWELL, JR.,
Amicus Curiae.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

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STATEMENT, BRIEF AND ARGUMENT OF AMICUS CURIAE

STATEMENT.

The Statute of the United States provided:

> "The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity."
>
> Act of March 14, 1900, 31 Stat. L. 45.

While that Statute was in force, various parties loaned to others gold dollars which answered to that statutory description, or currency dollars which, at the time, were the *equivalent* of such gold dollars.

Such written obligations of the debtors contained in substance or in effect the following provision:

> "The undersigned promises to pay One Thousand Dollars in gold coin of the United States of America of or equal to the standard of weight and fineness fixed by the Statute now in effect."

1. Thereafter, pursuant to the act of March 9, 1933 (Public Law No. 1, 73rd Congress), the Federal Government, under an emergency power, took possession of all gold coin, bullion and gold certificates. The Government paid for such gold in currency dollars, each of which, *at that time*, represented 25 8/10 grains of gold. Payment was at the rate of one of such currency dollars for each 25 8/10 grains of gold which had been taken.

2. On June 5, 1933, Congress passed a Joint Resolution (Public Resolution No. 10, 73rd Congress), the stated purpose of which was:

> "To assure uniform value to the coins and currencies of the United States."

That resolution declared (inter alia):

> a) That all provisions and obligations which required payment in gold were against public policy.
>
> b) That every such obligation, *heretofore* or hereafter incurred, should be *discharged* upon payment "*dollar for dollar*" in any coin or currency which at the time of payment was legal tender for public and private debts.
>
> c) That all coins and currencies of the United States theretofore or *thereafter* issued should be legal tender for all debts.
>
> (Note that on June 5, 1933, when that resolution was adopted, the dollar was defined by statute as the unit of value of the United States, and, as defined by statute, the dollar consisted of 25.8 grains of gold.)

3. On January 31, 1934, the statutory definition of a dollar was changed, and from and after that date, the gold content—the essence of a dollar, was 15 5/21 grains of gold. This change in the essence,—the gold content, and, therefore, the statutory definition—, of a dollar, was made by presidential proclamation under authority theretofore granted by Congress.

> (The stated purpose for the exercise of that authority was to "stabilize domestic prices and to

protect the foreign commerce against the adverse effect of depreciated foreign currencies."

Proclamation of Jan. 31, 1934, U. S. C. A., pp. 589 and 590.)

When the Federal Government took possession of all gold, that act made it impossible for debtors to fulfill their obligations by payment in gold.

It was therefore necessary to provide a medium by which such obligations might be settled.

By the Joint Resolution of June 5, 1933, Congress provided such a medium by making all coins and currencies legal tender "dollar for dollar" in settlement of all debts.

As the dollar consisting of 25.8 grains of gold was the statutory unit of value, and as each currency dollar was *at the time* the *equivalent of* and representative of that specific gold dollar, it is clear that under those facts alone no question could arise concerning the amount which was to be paid under such obligations, nor concerning the number of currency dollars which would be necessary to discharge such obligations.

However, after January 31, 1934, on which date *the essence, the gold content, and, therefore, the statutory definition*, of the dollar was changed, various debtors contended that under the laws as they now exist, obligations of the kind and character hereinbefore described might be fully discharged by payment in a number of currency dollars equal to the number of dollars specified in such respective obligations, *notwithstanding the fact that the new unit of value, defined as a dollar, had been reduced in its essence, to-wit, its gold content, and therefore was not equal*

to the standard of weight of the dollar which was specified in the obligations.

Those facts and circumstances, and that assertion by various debtors, present the following

ISSUE ON THE MERITS.

What number of currency dollars, each of which is the *equivalent* of and represents only 15 5/21 grains of gold, must be paid by a debtor to discharge an obligation executed by him, which evidenced a promise to pay a specified number of dollars, each of which consisted of or was the equivalent of and represented 25.8 grains of gold?

The determination of that issue depends not alone upon elementary law and the most fundamental principles of Justice. Because various acts of Congress which were enacted *at different times and for different purposes, when read together,* make it appear that, under the authority of law, an obligation may be discharged by payment of less than the amount specified therein, the determination of that issue depends upon questions of substantive law, some of which involve the powers of Congress and of the Federal Government under the Constitution of the United States.

QUESTIONS OF LAW.

1. Was the law in force, at the time the obligations were entered into, part of the obligation of the contract?

2. Has Congress power to declare what *amount* shall discharge an obligation?

3. If the result of reading two or more acts of Con-

gress together, or if the *combined* effect of two or more acts of Congress, be to deprive a person of his property without due process of law, is such a result a valid and legitimate result within the powers of the Federal Congress?

4. Has Congress power to impair the obligation of a legitimate contract by legislation which, on its face, not only changes the medium by which the obligation was to be fulfilled, but which also *reduces* the *amount* necessary to discharge such obligation below the amount specified therein?

POINTS AND AUTHORITIES.

1. The law in effect at the time the obligation was entered into constitutes the obligation of the contract.

Hoffman vs. Quincy, 4 Wallace 550;
Edwards vs. Kearzey, 96 U. S. 601;
Lynch vs. U. S., 292 U. S. 571, l. c. 577.

2. If gold were obtainable, then, under the contracts before the Court, the debtors would be entitled to enforce the provisions thereof and require payment in gold.

Bronson vs. Rodes, 7 Wallace 229.

3. When the Government (the Sovereign) made it impossible to obtain gold, then, under elementary principles of law and fundamental principles of Justice, the debtors are entitled to receive an amount in currency which is the *equivalent of* (and actually represents,) the *amount of gold specified in the obligation.*

Gregory vs. Morris, 96 U. S. 619, l. c. 625;
Butler vs. Horwitz, 7 Wallace 258, l. c. 261;
Trebilcock vs. Wilson, 12 Wallace 687, l. c. 695;
Feist vs. Societe Intercommunale Belge D'Electricite, decided by the House of Lords in England on Dec. 15, 1933;

The Serbian case;

The Brazilian case,

Decided by the Permanent Court of International Justice June 15, 1929; Publications of that Court, Series E, No. 5, p. 205 and p. 216.

4. Congress is without power to specify what *amount* shall discharge an obligation. That is a judicial function.

Rood vs. Heartt, 21 Wallace 558;
Den vs. Hoboken Land Co., 18 Howard 272;
Kilbourn v. Thompson, 13 Otto 168, l. c. 193.

5. Rights arising out of contracts are protected by the Fifth Amendment. Therefore, if such rights be destroyed or decreased as a result of the combined effect of two or more acts of Congress, such a result is beyond the powers of Congress and is, therefore, invalid.

Lynch vs. United States, 292 U. S. 571.

6. Congress is without power to impair the obligation of a legitimate contract.

Lynch vs. United States, 292 U. S. 571;
Murray vs. Charleston, 96 U. S. 449;
Osborn vs. Nicholson, 13 Wallace 654;
Hepburn vs. Griswold, 8 Wallace 603, l. c. 623.

7. Congress itself has recognized fundamental principles of Justice which should apply and has also recognized the equities which arise as a result of reducing the gold content of the unit of value—the dollar.

Act of Congress authorizing the Treasurer of the United States to credit the Government of the Philippine Islands with $23,862,750.78, being the amount equal to the increase in value in the deposits of the Philippine Islands based upon the reduced gold content of the dollar.

Session Laws.
Statutes of the United States of America, 73rd Congress, p. 1115.

ARGUMENT.

This Court has uniformly held that the obligation of a contract is the law which binds the parties to perform their agreement; the law in force *at the time the contract is made* and which enters into and becomes a part of the contract.

Decisions cited under Point I.

When gold was obtainable, this Court decided that a debtor had the right to enforce the provision of an obligation which required payment in gold.

Bronson vs. Rodes, 7 Wallace 229.

That decision has never been reversed or overruled. It has been followed frequently and is still the law applicable to a time when gold is obtainable.

The Legal Tender cases did not weaken or in any manner affect the force of the decision of this Court as rendered in Bronson vs. Rodes, supra.

In effect, the Legal Tender cases reaffirmed the decision in Bronson vs. Rodes. In Knox vs. Lee, the leading Legal Tender case, the majority opinion of this Court *limited* the effect of the legal tender decisions to *contracts* which were *payable only in "money."*

The Court said:

> "We speak now of contracts to pay money generally. Not contracts to pay some specifically defined species of money."
>
> Knox vs. Lee, 12 Wallace, l. c. 548.

When, under contracts which called for payment in gold, currency was offered in lieu thereof, this Court has repeatedly stated that the amount of such currency must be *equivalent* in value to the specified amount of gold coin considered as a commodity.

Gregory vs. Morris, 96 U. S., l. c. 625;
Butler vs. Horwitz, 7 Wallace, l. c. 261;
Trebilcock vs. Wilson, 12 Wall., l. c. 695.

Such decisions were rendered upon elementary principles of law and fundamental principles of Justice upon which the social contract is based.

Two other courts of the greatest dignity, in deciding the particular issue now before this Court, have applied only elementary principles applicable to the interpretation of contracts, and the plainest principles of abstract justice, and in doing so, each has reached the same conclusion, to-wit, that the creditor is entitled to receive, and the debtor may be compelled to pay, such an amount in currency *as represents the gold value of the nominal amount of each payment;* such gold value to be ascertained in accordance with the standard of weight and fineness existing at the time the respective contracts were entered into.

Feist vs. Societe Intercommunale Belge D'Electricite, decided by the House of Lords of England on Dec. 15, 1933;

The Serbian case, judgment of the Permanent Court of International Justice;

The Brazilian case, rendered by the Permanent Court of International Justice.

(See publications of the Permanent Court of International Justice, Series E, No. 5, p. 205, and Series E, No. 5, p. 216, being respectively judgments No. 14 and No. 15.)

In deciding those cases, those Courts have only restated the principles which this Court and all courts in Christendom have declared.

Never before has this Court been called upon to decide the application of those principles to written contracts, in a case where the acts of Congress, on their face, purport to violate those principles.

In the cases now at bar, those same principles must again control and be decisive of the issue, unless it can be said that there is something in the Constitution of the United States which authorizes a departure from those principles—unless it can be said that, under the Constitution of the United States, the Congress has power to arbitrarily set aside elementary principles of Justice and fixed and established principles of law by taking from one and giving to another *by its declaration that an obligation may be discharged upon payment of less than the amount specified.*

THE POWER WHICH CONGRESS PURPORTED TO EXERCISE *IF THE TWO ACTS BE READ TOGETHER.*

It is only when the Joint Resolution of June 5, 1933 is read *in conjunction with* the subsequent act of the Government in changing the essence of a dollar and the definition of a dollar, by reducing the gold content thereof, that it becomes apparent that Congress has attempted to declare the *amount* which shall discharge an obligation and has furthermore attempted to *reduce* such *amount* below the amount specified in the obligation itself.

It might be conceded that (standing by itself and

considered by itself) the act of the Government in taking possession of all gold was itself the exercise of a valid power. It might be viewed as a condemnation of gold, and payment of "just compensation" therefor, because the currency dollars which were paid for such gold were *at that time*, the *equivalent* thereof, and, at that time, *in fact*, actually represented the identical amount of gold which was the content of each of such gold dollars.

It might be conceded that the Joint Resolution of June 5, 1933 (standing by itself and considered by itself) was the exercise of a valid power by Congress; *provided* that Resolution be limited to currency dollars which were, *in fact*, the *equivalent* of, and which actually represented, the identical amount of gold which constituted the gold dollar as precisely specified.

It might be conceded that (standing by itself and considered by itself) the act of the Government in reducing the gold content of the dollar was the exercise of a valid power. The Constitution gives to Congress the power to coin money and to "regulate the value thereof."

But, notwithstanding that such concessions might be made, as to the validity of each of those acts (*standing by itself* and when it is *considered by itself*), nevertheless, if the *combined effect* of two or more of such legislative acts produces a *result*, which is prohibited by the Constitution, that *result* is invalid and utterly void, because it transcends the power of Congress.

The *combined effect* of two or more of those acts, when read together, is to deprive a person of his property without due process of law.

The same *result* is obtained if the Joint Resolution be extended so as to apply even after January 31, 1934, upon which date the meaning of the word "dollar," used in the Resolution, was changed.

The *result* of depriving a person of his property without due process of law cannot be obtained without violating the express provision of the Fifth Amendment to the Constitution of the United States.

It would not be obtained if the words "dollar for dollar," in that Resolution, be limited so as to apply only when and while the word "dollar" meant 25 8/10 grains of gold.

The combined effect obtained by reading the Joint Resolution of June 5, 1933, in connection with the subsequent act of the Government in reducing the gold content of a dollar, or the effect of extending the Joint Resolution so as to apply after the statutory definition of a dollar had been changed by reducing the gold content of the dollar, is to abrogate *pro tanto* outstanding contracts and to relieve the debtors *pro tanto* from liability on contracts without making compensation to the creditors.

It relieves the debtor of a liability to pay 25 8/10 grains of gold, by permitting him to pay in discharge of that debt currency *equivalent* only to 15 5/21 grains of gold.

Such action is prohibited by the Fifth Amendment to the Constitution.

> Lynch v. United States, 292 U. S. 571, and other decisions there cited.

In that case this Court said:

> "But Congress was without power to reduce

expenditures by abrogating contractual obligations of the United States."

We respectfully submit that Congress is equally without power to "assure the uniform value of the coins and currencies of the United States" by declaring that obligations which, by their terms, are to be paid in dollars *equivalent* to and representing 25 8/10 grains of gold each, may be discharged upon payment of currency dollars which are *equivalent* only to and represent only 15 5/21 grains of gold.

CONGRESS HAS NO POWER TO IMPAIR THE OBLIGATION OF A VALID CONTRACT.

It is sometimes stated and the statement is contained in some of the opinions appealed from, that the express prohibition in the Constitution against the enactment of any law which impairs the obligation of a contract is, by its terms, applicable to the enactment of a law by the States as distinguished from the Federal Government.

It is undoubtedly correct that the prohibition, *as expressed*, is limited to the States, but, we most respectfully submit that it cannot be successfully argued from that fact: that under the Constitution, *absent an express grant of such power to Congress*, Congress has power to pass a law which impairs the obligation of a contract.

The purpose of the Constitution was, as this Court has said, "the protection of contracts."

The protection of contracts is necessary if the inalienable human rights of a free people are to be preserved.

This Court has said:—

"The inviolability of contracts and the duty of performing them, as made, are foundations of all well-ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed."

Murray v. Charleston, 96 U. S. 449.

"Rights acquired by a deed, will or contract of marriage, or other contract executed according to statutes subsequently repealed subsist afterwards, as they were before, in all respects as if the statutes were still in full force. This is a principle of universal jurisprudence. It is necessary to the repose and welfare of all communities. A different rule would shake the social fabric to its foundations and let in a floodtide of intolerable evils. It would be contrary to 'the general principles of law and reason,' and to one of the most vital ends of government. Calder v. Bull, 3 Dall. 388. The doctrines of the repeal of statutes and the destruction of vested rights by implication, are alike unfavored in the law. Neither is to be admitted unless the implication is so clear as to be equivalent to an explicit declaration. Every doubt should be resolved against a construction so fraught with mischiefs. There is nothing in the language of the Amendment which in the slightest degree warrants the inference that those who framed or those who adopted it intended that such should be its effect. It is wholly silent upon the subject. The proposition, if carried out in this case, would, in effect, take away one man's property and give it to another. And the deprivation would be 'without due process of law.' This is forbidden by the fundamental prin-

ciples of the social compact, and is beyond the sphere of the legislative authority both of the states and the nation."

Osborn vs. Nicholson, 13 Wallace 654.

Again, in Hepburn vs. Griswold, 8 Wallace, l. c. 623, this Court said:

"But we think it clear that those who framed and those who adopted the Constitution, intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we cannot doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impairs the obligation of contracts, is inconsistent with the spirit of the Constitution."

The above quotation from Hepburn vs. Griswold was not overruled or contradicted by the decision of this Court in the Legal Tender cases.

The decision in the Legal Tender cases was limited to sustaining the constitutionality of the Legal Tender acts as applied to debts.

In doing so, the Court said:

"In so holding, we overrule *so much of what was decided* in Hepburn vs. Griswold, 8 Wallace 603, as ruled the acts unwarranted by the Constitution, so far as they apply to contracts made before their enactment."

Knox vs. Lee, 12 Wallace 457.

But as applied to debts expressed only in *money* the Legal Tender acts did not impair the obligation of a contract.

In the principal Legal Tender decision, the Court asserted its conclusion in the following words:

> "What we do assert is that Congress has power to enact that the Government's promises to pay money shall be for the time being equivalent in value to the representative of value determined by the Coinage Acts or to multiples thereof."
>
> Knox vs. Lee, 12 Wallace 457.

The decision, therefore, held the Legal Tender Act to be valid as applied to debts, which, by their terms, were expressed only in *money*. But, it must be noted that the greenbacks, to which the decision applied, were the "equivalent in value to the representative of value, as determined by the Coinage Acts" in effect when the contracts were made.

Each greenback represented the *precise dollar* which had been *specified* in the contracts *then* before the Court.

The situation now before this Court is entirely different.

The greenbacks which exist in the United States today are not "the equivalent in value to the representative of value, as determined by the Coinage Acts," which were in effect, when the contracts, *now* before this Court, were made.

The existing greenbacks do not represent the *precise dollar* which was *specified* in the contracts *now* before the Court.

Under those decisions, and under the decision of this Court in Lynch vs. United States, supra, we most

respectfully submit that it cannot be asserted that Congress has power to reduce the amount necessary to constitute payment and to thereby impair the obligation of a legitimate contract.

Nor can it be argued that Congress has such power from the fact that Bankruptcy statutes impair the obligation of contracts—the power to enact Bankruptcy statutes was expressly granted to Congress and that power was based upon the wisdom of human experience and the policy of mankind to enable a man to fulfill his obligations *to the extent of his assets* and thereupon again start fresh.

It may be, too, denied whether in fact a Bankruptcy statute impairs the obligation of a contract. It would seem more proper to say that the obligation of a contract exists and *is allowed in full* as a claim against the assets of the bankrupt; but, that for reasons founded in the above mentioned human experience, the remedy or recovery is limited to a proportionate share of the assets of the bankrupt.

We submit that there is no proper analogy between the enactment of a Bankruptcy statute by Congress, *under an express power given to Congress*, and the enactment by Congress of laws, in the *absence* of any express power given to Congress, which, in their operation, impair the obligation of contracts made between citizens or between citizens and States or between citizens and the United States.

The assumption of such power by Congress, if applied to the contracts of the Government would be as this Court said in Lynch v. U. S., *supra*, *"repudiation"*; as applied to contracts between individuals it would be the taking of the property of one and giving to another without just compensation, and would,

therefore, be depriving a citizen of his property without due process of law.

A SIMPLE ANALOGY.

The subject matter of these cases has frequently been discussed and presented as being involved because it is *money*, but, that fact makes it no more involved than if it were *grain*.

If, in 1932 farmer Jones had loaned to farmer Brown one hundred bushels of wheat for two years, and if farmer Brown had evidenced his debt by the following written obligation,

> "Two years after date I promise to pay to John Jones 100 bushels of wheat according to the standard fixed by the metric system of dry measure as now established by act of Congress,"

such obligation would speak for itself in the plainest words in their ordinary meaning.

Suppose that, on June 5, 1933, Congress had changed the units of dry measure and had legislated that the quantity which had theretofore constituted a peck should thereafter constitute a bushel, and also purported or attempted to enact a law which said that all contracts made prior to June 5, 1933, which called for the delivery of bushels of wheat should be discharged upon delivery of the specified number of bushels measured by the new units of dry measure, so that one hundred of such new bushels consisted of only one-quarter the total quantity of wheat which had been originally loaned by farmer Jones.

Let us suppose that thereafter, in 1934, Mr. Brown had tendered to Mr. Jones an amount of wheat con-

sisting of exactly one-quarter the amount which he had borrowed, but, which consisted of one hundred of the new bushels as reduced by the new units of measure.

Without question, Congress had power to fix the units of dry measure. Equally without question, Congress had *no power* to specify the quantity of wheat which would discharge the debt.

The lack of such power is apparent because,

a) The *amount* which may be necessary to discharge a debt is a judicial question,

b) The purported act of Congress would have deprived farmer Jones of his property without due process of law, and

c) It would have impaired the obligation of his contract.

THE REASON THAT MANY STATEMENTS ARE INVOLVED.

Much has been said and much has been written concerning the question now before the Court and many statements are, at first glance, apt to mislead.

This is due to the fact that the word "dollar" has frequently been used in the same sentence in two different meanings.

The phrase "dollar of the United States" was without meaning prior to the time when Congress had *fixed* and had thereby defined the "dollar" of the United States.

At the time the various contracts, now before this Court, were entered into, Congress had done that and, therefore, the word "dollar" of the weight and fineness specified meant the unit of value of the United States consisting of 25 8/10 grains of gold. After

January 31, 1934, the word "dollar" meant the unit of value of the United States equal to 15 5/21 grains of gold.

The following is an example of such a statement which is apt to mislead:

> "Does it take one dollar and sixty-nine cents to pay a debt of one dollar?"

That sentence uses the word "dollar" twice and each time in a different sense and with a different meaning.

Attributing the two different meanings to the word, the same thought, if properly expressed, would be:

> "Does the payment of currency equal to 15 5/21 grains of gold pay a debt of 25 8/10 grains of gold?"

The same comment is applicable to the use of the symbol "$" which is frequently used in the same sentence to indicate the word dollar, but with two different meanings.

A sentence may be written:

> "Does it take $1.69 to pay a debt of $1.00?"

But, that sentence, as written, uses the same symbol "$" to express two different entities. One a dollar consisting of 25 8/10 grains of gold and the other a dollar consisting of 15 5/21 grains of gold.

CONGRESS, BY ITS OWN ACTION, HAS STATED WHAT WOULD BE EQUITABLE.

Prior to the reduction in the gold content of the dollar, the Government of the Philippine Islands had

maintained in banks in this Country the major portion of the currency reserves of its monetary system, and had considered such deposits to be the equivalent of a gold reserve.

It was represented to Congress that under those circumstances it would be equitable to credit the Treasury of the Philippine Islands with an amount equal to the increase in value (resulting from the reduction of the weight of the gold dollar) of the balances maintained in the banks of the United States by the Government of the Philippine Islands.

See proceedings of the House of Representatives, June 14, 1934, Congressional Record.

Thereupon, the Congress of the United States, by law, authorized the Secretary of the Treasury to establish on the books of the Treasury of the United States, a credit in favor of the Treasury of the Philippine Islands for $23,862,750.78, being an amount equal to the increase in value (resulting from the reduction of the weight of the gold dollar) of the gold equivalent at the opening of business on January 31, 1934, of the balances maintained at that time in banks in the Continental United States by the Government of the Philippine Islands for its gold standard fund and its Treasury Certificate fund, less the interest received by it on such balances. The appropriation for that purpose was made.

Session Laws;
Statutes of the United States of America, 73 Congress Laws, 1115.

When the Congress of the United States has credited the Government of the Philippine Islands with

that amount representing the increased gold equivalent of the number of dollars which that Government had on deposit in the United States, *on the ground that such action would be equitable,* can it be asserted that a different treatment of the citizens of the United States, or a different method of settlement of the debts between citizens of the United States is equitable.

THE PRACTICAL PHASES OF THE MATTER

It has been asserted that, if the debtors be required to pay more than the number of dollars evidenced by their obligation, then such requirement itself might bankrupt them.

We submit that such an argument has no place in a Judicial Tribunal; but, if it has, there is a simple means to avoid such a dire result.

The Government of the United States might, tomorrow, restore the dollar to its original content.

So long as existing legislation makes it impossible to lawfully obtain and deal in gold, and substitutes the currency dollar therefor, it would seem that such a course might obviate the difficulties which are presented as an argument in support of the action of the Government.

The very fact that gold is not obtainable constitutes the most urgent reason for maintaining the standard and integrity of the dollar as fixed by statute. Such a course would sustain the confidence of the people in the currency and avoid any impairment of contracts.

In the light of history the confidence of the people in the currency of a country seems to be the first essential for recovery from a depression.

The dollar should remain a fixed, certain and definite thing.

This Court has made the following statement:

> "It (the Constitution) declares that 'no state shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts.' These prohibitions, associated with the powers granted to Congress 'to coin money, and to regulate the value thereof, and of foreign coin,' most obviously constitute members of the same family, being upon the same subject, and governed by the same policy.
>
> This policy was to provide a *fixed* and uniform standard of value throughout the United States, by which the commercial and other dealings between the citizens thereof, or between them and foreigners, as well as the moneyed transactions of the government, should be regulated."
>
> Ogden vs. Saunders, 12 Wheaton, l. c. 264.

Notwithstanding the statement by this Court that the policy of the Constitution was to provide a *fixed* and uniform standard of value throughout the United States, it is worthy of note that the Joint Resolution of June 5, 1933, attempts to make impossible any *fixed* unit, and further attempts to make impossible any contract based upon or referring to a *fixed* unit.

That Resolution not only declares to be against public policy an obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, but also declares to be against public policy "every provision which purports to give the obligee a right to require payment in an amount in money of the United States *measured by gold.*"

The evident purpose of the express language of that Resolution is to preclude the *fixing* of a standard and to preclude the entering into any contract based upon a *fixed* standard.

Such a purpose violates the policy of the Constitution as declared by this Court.

THE NECESSARY CONSEQUENCES OF THE ACTS OF THE GOVERNMENT.

If the apparent result of the combined effect of the two acts of Congress be valid and within the Constitutional powers of Congress, there is no limit to which Congress may not go in repudiating the debts of the Government and to which it may not go in impairing or destroying the obligation of contracts between citizens.

> a) If Congress has power to declare that obligations, which express a promise to pay 25 8/10 grains of gold for each dollar specified, may be discharged by payment of 15 5/21 grains of gold for each dollar specified, or
>
> b) If the Joint Resolution of June 5, 1933, be construed or extended so as to apply at all times and regardless of what the word "dollar" may mean at different times;

then, and in either event, by the same reasoning, Congress would have power tomorrow to declare that what is now a dime should be a dollar, and thereupon all obligations payable in dollars might be discharged by payment in what we now call dimes, merely because Congress had given a new meaning to the word "dollar."

This Court itself has decided that after the meaning of a word has been changed, the new meaning thereof cannot be ascribed to the word as used in *prior* contracts.

In Hoffman v. Quincy, 4 Wallace 552, this Court said:

> "A statute declaring that the word 'ton' should thereafter be held, in prior as well as in subsequent contracts, to mean half or double the weight before prescribed, would affect its construction."

The Court then said that it could not be doubted either upon principle or authority that such a law would impair the obligation of a contract.

For which reasons, it is respectfully submitted that obligations which, by their terms, are payable in gold or the equivalent thereof of the standard of weight and fineness of March 14, 1900, may be discharged under existing circumstances only by payment of the amount of currency of the United States which is the equivalent of and which actually represents the amount of gold contained in the number of dollars of the weight and fineness specified in the various obligations at the time when they were entered into.

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